Sheet Metal Workers International Association Local Union No. 73 *and* Crown Corr, Inc.

Sheet Metal Workers International Association Local Union No. 20 *and* Crown Corr, Inc.

Sheet Metal Workers International Association, AFL–CIO *and* Crown Corr, Inc. and Bridge, Structural and Reinforcing Iron Workers Local No. 1, of the International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO, Party-in-Interest. Cases 13–CD–486, 13–CD–487, and 13–CD–488

June 27, 1994

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

The charges in this Section 10(k) proceeding were filed December 7, 8, and 9, 1993, by the Employer, Crown Corr, Inc., alleging that the Respondents, Sheet Metal Workers International Association Local No. 73, Sheet Metal Workers International Association Local No. 20, Sheet Metal Workers International Association, AFL–CIO violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by the Bridge, Structural and Reinforcing Iron Workers Local No. 1. The hearing was held January 7, 1994, before Hearing Officer Wanda L. Moses.[1] Thereafter, the Employer filed a brief in support of its position.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free of prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The participating parties stipulated that the Company is an Indiana corporation engaged in the installation of preformed, sheet metal roofing and siding, with its principal place of business currently located at 7100 West 21st Avenue, Gary, Indiana, that the Company does work at various construction sites in Illinois, Indiana, and other States, and that during the past 12 months it has purchased and received goods, material, and supplies valued in excess of $50,000 at Illinois construction sites, from points outside the State of Illinois, and during the same period received gross revenues in excess of $500,000. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The parties, present at the hearing stipulated, and we find, that Sheet Metal Workers International Association Local No. 73, Sheet Metal Workers International Association Local No. 20, Sheet Metal Workers International Association, AFL–CIO, and Bridge, Structural and Reinforcing Iron Workers Local No. 1, of the International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

The Employer's president, Pellar, testified that the Employer is a member of the National Association of Siding and Decking Contractors and is bound to that association's collective-bargaining agreement with the Sheet Metal Workers International Association, AFL–CIO.[2] This agreement covers all of the Employer's employees who are engaged in jobsite metal work. Around the end of August 1993,[3] the Employer received a contract from Jacobs Constructors, Inc. to fabricate, handle, and load all necessary metal roofing and siding for a project at the CornProducts facility. In a letter of assignment the Employer assigned the work of ''siding'' to its sheet metal workers. Pellar testified that the assignment covered all of the work covered by the Employer's contract with Jacobs Constructors.

According to Pellar, the Employer received a phone call in September and another call in early October from Craig Satalic, business agent for Iron Workers Local No. 1 claiming the work on the CornProducts job. The Employer received a letter dated October 20 from the Iron Workers' attorney stating that the Employer had breached its agreement with the Iron Workers, and threatening legal action unless the work was assigned to the Iron Workers. According to Pellar, on November 22, Satalic told Pellar that he wanted at least 50 percent of the work to be assigned to the Iron Workers.

The Employer had three Sheet Metal Workers represented employees on the job, two were from Local 20 and the other was from Local 73. On December 7, Satalic again stated that he had to have 50 percent of the work. Later that same day Pellar talked with Michael Sullivan, business manager for Local 20, by phone.[4] Pellar stated to Sullivan that he was consider-

[1] Sheet Metal Workers Local Union No. 73 and Bridge, Structural and Reinforcing Iron Workers Local No. 1 were served with notices of the hearing but did not attend the hearing. We note that Iron Workers Local No. 1's attorney asserted in a letter to the Region that no labor dispute exists, and that the Iron Workers did not intend to participate in the proceeding. The letter was admitted into evidence, for the limited purpose of establishing that notice of hearing had been received by the Iron Workers.

[2] Pellar is the president of the association.

[3] All dates hereafter are 1993 unless otherwise stated.

[4] Pellar testified that Sullivan is also a first vice president of the International.

ing changing the work assignment. Shortly thereafter, Pellar received a letter, by fax, from the Sheet Metal Workers International Association, stating that it would not accept reassignment of the work and would take the necessary action to protect its members and their work. Sullivan testified that, after his conversation with Pellar, he instructed the members of Local 20 to engage in a work stoppage which lasted 2 days.

B. *Work in Dispute*

The work in dispute is furnishing and installing insulated and uninsulated metal panels, various flashing trim pieces, panel support members, metal roof panels, translucent fiberglass fixed and vented window units with operating hardware and miscellaneous sealants and fasteners at the CornProducts plant on Archer Road in Summit-Argo, Illinois.

C. *Contentions of the Parties*

The Employer contends that reasonable cause exists to believe that the Sheet Metal Workers violated Section 8(b)(4)(D) of the Act. The Employer contends that the work in dispute always has been assigned to the Sheet Metal Workers, and that this is reflected in the national agreement between the National Association of Siding and Decking Contractors and the Sheet Metal Workers International Association, AFL–CIO and that it is bound to that agreement. The Employer further contends that the industry practice in the geographic area is not inconsistent with the current assignment and that the Sheet Metal Workers are specifically trained to perform siding and decking work.

The Sheet Metal Workers International Association, AFL–CIO and Local 20 position at the hearing was that the matter was properly before the Board and that the Board should award the work in dispute to the employees of the Employer who are represented by the Sheet Metal Workers International Association.

D. *Applicability of the Statue*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed-upon method for the voluntary adjustment of the dispute.

The Employer's president, Richard Pellar, testified that the Employer received phone calls from the business agent for Iron Workers Local 1 claiming the work, and a letter from the Iron Workers' attorney threatening legal action unless the work was assigned to the Iron Workers. Pellar also testified that he received a letter from the Sheet Metal Workers International Association stating that it would take the necessary action to protect its members and their work. Sullivan, business manager for Local 20, testified that, after Pellar had indicated that the Employer might reassign the work, he instructed the members of Local 20 to engage in a work stoppage which lasted 2 days.

Based on the foregoing, we find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. The parties participating in the hearing stipulated, and we find, in the absence of any claim or evidence to the contrary, that there exists no agreed-upon method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering several factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962). The following factors are relevant in making the determination of the dispute.

1. Collective-bargaining agreements

The Employer is a member of the National Association of Siding and Decking Contractors and is bound to that association's collective bargaining agreement with the Sheet Metal Workers International Association, AFL–CIO. Article 1 section 1, of that agreement states:

> This Agreement covers the rates of pay and conditions of employment of all employees of the EMPLOYER engaged in job site fabrication, handling, erection, installation, dismantling conditioning, adjustment, alteration, repairing and servicing of all ferrous or nonferrous metal work and all other materials used in lieu thereof of those items set forth in Section 2 of this Article throughout the United States and it's territorial possessions.

Pellar testified that the work described in the above agreement is the work assigned to the sheet metal workers at the CornProducts facility. There was no evidence presented to establish a collective-bargaining agreement between the Employer and Ironworkers Local 1. In these circumstances, we find the factor of collective-bargaining agreements favors an award of the disputed work to employees represented by the Sheet Metal Workers.

2. Employer preference and past practice

The Employer has assigned the disputed work to employees represented by Sheet Metal Workers Locals 20 and 73. Pellar testified that he had assigned a large number of projects to sheet metal workers, both in the geographical area as well as nationally when the projects fell within the jurisdiction of both the Sheet Metal Workers and the Iron Workers. As for the future, the Employer prefers that its assignment to employees represented by the Sheet Metal Workers be continued. No evidence was presented contrary to Pellar's testimony. In the absence of such evidence, we find that the factors of employer preference and past practice favor the continued assignment of the disputed work to the employees represented by the Sheet Metal Workers.

3. Area and industry practice

Pellar testified regarding four major projects, performed by his competitors using sheet metal workers, in the geographical area during the last 3 years. There was no testimony of identical or similar work being done using iron workers. Thus, based on the evidence presented we find that awarding the work to sheet metal workers is consistent with industry practice in the area.

4. Relative skills

Pellar testified that Sheet Metal Workers locals have apprenticeship programs that include training in the type of work that is in dispute. The Employer introduced a manual entitled ''Siding and Decking for the Sheet Metal Industry'' which was developed by ''The National Training Fund for the Sheet Metal and Air Conditioning Industry.''[5] Pellar stated that the workers the Employer now has know whether a structure is able to receive a particular product, that they can lay out the product, can make flashings, and can install roofing properly. There was no evidence presented contrary to Pellar's testimony and no claim or evidence presented that the iron workers have any skills relative to the disputed work. In these circumstances we find that the factor of relative skills favors the assignment of the work in dispute to the Employer's employees represented by the Sheet Metal Workers.

[5] Pellar testified that the training fund is a program established by the Sheet Metal Contractors and Sheet Metal International that develops programs to help in the training of sheet metal workers.

5. Economy and efficiency of operations

Pellar testified that the sheet metal workers know how to do the work safely. Further, the collective-bargaining agreement with the Sheet Metal Workers allows him to keep a crew of four employees that he can assign to any job in the country. Besides those four workers, one-half of the work force can come from the home local, Local 20, regardless of where the job is located within the country. The agreement with the Sheet Metal Workers does not restrict the type of work an employee can do based on the individual's rate of pay. Pellar testified that the Iron Workers contract, unlike the contact with the Sheet Metal Workers, encompasses the totality of all structural iron work and does not specialize in the area of siding and metal decking. As there is no claim or evidence contrary to Pellar's testimony, we find that the factor of economy and efficiency of operations favors the assignment of the work in dispute to the Employer's employees represented by the Sheet Metal Workers.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Sheet Metal Workers International Association Local No. 73, and Sheet Metal Workers International Association Local No. 20, are entitled to perform the work in dispute. We reach this conclusion by relying on the factors of collective-bargaining agreements, the employer's preference, past practice, and industry practice in the area, relative skills, and economy and efficiency of operations. In making this determination, we are awarding the work to employees represented by Sheet Metal Workers International Association Local No. 73, and Local No. 20, not to those Unions or their members.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of Crown Corr, Inc., represented by Sheet Metal Workers International Association Local No. 73, and Local No. 20, are entitled to perform the disputed work subcontracted to the Employer by Jacobs Constructors at the CornProducts facility.